IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No. 3068 of 1998

Between:

N.P.Behera

..... PETITIONER

AND

The Secretary, Ministry of Labour, Govt., of India,
New Delhi, and 4 others

.....RESPONDENTS

ORDER:

This writ petition is filed by the workman seeking a Mandamus declaring the actions of

i. 1st respondent declining to refer the dispute to Labour Court vide his letter No.42012/13/96-IR (Misc.) dated 28.02.1996;

ii. respondents 3 to 5 in not reinstating the petitioner into service consequent upon revocation of resignation on 30.11.1989;

as illegal and arbitrary, and consequently direct respondents 3 to 5 to reinstate the petitioner into service with all back wages, continuity of service and attendant benefits.

It is the case of the petitioner that he joined the service of Central Warehousing Corporation as Warehousing Assistant (Grade-II) with effect from 26.09.1983. While working with the 5th respondent, he was kept under suspension on the allegation that he was involved in a criminal case No.275/88 on the file of V.M.M.C, Visakhapatnam. The said criminal case, after enquiry, ended in acquittal on 04.11.1991. However his suspension was not revoked. Thereafter it seems that due to some personal reasons, he submitted resignation on 30.06.1989. On 30.10.1989, before the resignation was accepted, he withdrew his resignation letter. Thereafter on 11.05.1990 the resignation of the petitioner was accepted and he was not allowed to join duty. Later on, so many incidents have taken place and there is no necessity to go into all those aspects. However, it is interesting to note that the petitioner was not permitted to withdraw his resignation on the ground that the petitioner has produced a false caste certificate and obtained employment. The caste certificate produced by the petitioner at the time of obtaining employment was from Mandal Revenue Officer, Visakhapatnam. However, he raised a dispute, aggrieved by the same, before the conciliation officer. The Conciliation Officer on failure of the conciliation, reported the matter to the Central Government for

considering the matter being referred to the Labour Court for adjudication. However, the Government of India, Ministry of Labour, through its letter No.L-42012/13/95-IR (misc.), dated 28.02.1996 rejected to refer the matter for adjudication on the following grounds:

"It is reported that the workman tendered his resignations on his own which was accepted by the management. It is also reported that the workman got into the service of the Corporation by producing fake caste certificate."

Aggrieved by the same, the present writ petition is filed. According to the petitioner, the rejection of the Central Government in referring the matter to Industrial Tribunal for adjudication is arbitrary and illegal.

A detailed counter affidavit has been filed by the respondent-management, Warehousing Corporation, denying the allegations made by the petitioner and asserting that as the petitioner's resignation was accepted as early as on 11.05.1990, the question of his withdrawal of resignation does not arise as per Section 19 of the Central Warehousing Corporation (Staff) Regulations, 1986, and thereafter, in fact, the matter was referred to the National Commission for Scheduled Castes and Scheduled Tribes and the petitioner was asked to produce caste certificate from the Mandal Revenue Officer, Ichapuram and he produced a certificate that was found to be false, therefore, no necessity had arisen for the Government to refer the matter to the Industrial Tribunal.

Though no counter is filed by the 1st respondent, the counsel appearing for it strenuously contended that the Government has not committed any error in rejecting the case of the petitioner, calling for interference of this Court under Article 226 of the Constitution of India..

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned proceedings and also other material made available on record.

At the outset, I am of the opinion that the impugned proceedings dated 28.02.1996 does not stand scrutiny of law. Neither the dispute raised by the petitioner is stalen or unreasonable. Simply because the management asserted that the petitioner has voluntarily tendered resignation and the same was accepted and became final, that

itself does not mean that the Government can accept the same and refuse to refer the matter to the Industrial Tribunal. As seen from the counter affidavit filed, there are so many disputes as to facts as well as legal position, particularly as to whether the resignation could have been accepted on 11.05.1990 in the teeth of letter of withdrawal dated 30.10.1989, and whether the acceptance of the management was right by invoking the regulation 19 of the Central Warehousing Corporation (Staff) Regulations, 1986 or not, is to be adjudicated upon and decided.

Further it is curious to note that the management had taken up on its own as to the jurisdiction of a Tahsildar deciding as to the correctness of the caste certificate issued by the Tahsildar, Visakhapatnam. Simply the matter could have been referred to the revenue officials or competent authority to find out whether the caste certificate produced by the petitioner was fake one, or even if it is true, whether the caste of the petitioner was properly verified or it required re-verification as per the Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules 1997. Without adopting such course of action, the management has referred the matter to the National Commission for Scheduled Castes and Scheduled Tribes, New Delhi and therefore, insisted the petitioner to produce some other certificate from Mandal Revenue Officer, Ichapuram. All these things, whether legal or illegal, are necessary to be gone into by a competent authority or fact-finding body.

Be that as it may, the only issue that falls for consideration in this case is as to whether the 1st respondent was right in refusing to refer the matter to the Industrial Tribunal for adjudication. I am of the considered opinion that so many factual and legal positions need to be examined, as to whether acceptance of the resignation by the management was right or wrong, by a properly constituted fact finding body, such as Industrial Tribunal. In that view of the matter, the impugned order passed by the 1st respondent is arbitrary and illegal and is liable to be set aside. Accordingly, the impugned order dated 28.02.1996, passed by the 1st respondent, is set aside and the 1st respondent is directed to refer the matter for adjudication to the Industrial Tribunal, within a period of one month, from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. No order as to costs.

C.V.RAMULU,J

Dated: 11.08.2005

Dsr